

KEEGAN, WERLIN & PABIAN, LLP

ATTORNEYS AT LAW
265 FRANKLIN STREET
BOSTON, MASSACHUSETTS 02110-3113

(617) 951-1400

TELECOPIERS:
(617) 951-1354
(617) 951-0586

December 14, 2004

Mary L. Cottrell, Secretary
Department of Telecommunication and Energy
One South Station, 2nd Floor
Boston, MA 02110

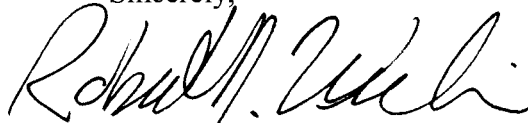
Re: D.T.E. 04-85 — Petition of Boston Edison Company and Commonwealth Electric Company for Approvals Relating to the Restructuring of Power Purchase Agreements with Northeast Energy Associates Limited Partnership

Dear Secretary Cottrell:

Enclosed for filing on behalf of Boston Edison Company and Commonwealth Electric Company, d/b/a NSTAR Electric is the Response to the Attorney General's Appeal of the Hearing Officer's December 2, 2004 Ruling in the above-referenced proceeding. Also enclosed is a certificate of service.

Thank you for your attention to this matter.

Sincerely,



Robert N. Werlin

Enclosures

cc: Joan Foster Evans, Hearing Officer
Service List

COMMONWEALTH OF MASSACHUSETTS

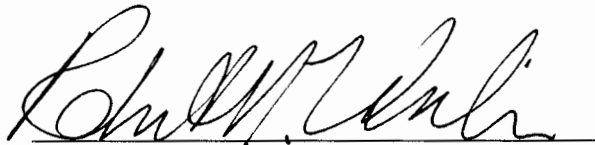
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company)
Commonwealth Electric Company)
_____)

D.T.E. 04-85

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document upon the Department of Telecommunications and parties of record in accordance with the requirements of 220 C.M.R. 1.05 (Department's Rules of Practice and Procedures).



Robert N. Werlin, Esq.
Keegan, Werlin & Pabian, LLP
265 Franklin Street
Boston, Massachusetts 02110
(617) 951-1400

Dated: December 14, 2004

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Boston Edison Company and
Commonwealth Electric Company
for Approvals Relating to the Restructuring of
Purchase Power Agreements with
Northeast Energy Associates Limited Partnership

)
)
)
)
)
)
)

D.T.E. 04-85

**RESPONSE TO ATTORNEY GENERAL’S APPEAL OF THE HEARING
OFFICER’S DECEMBER 2, 2004 RULING**

On December 9, 2004, the Office of the Attorney General filed with the Department of Telecommunications and Energy (the “Department”) an Appeal of the Hearing Officer’s December 2, 2004 Ruling (the “Appeal”) in this proceeding. The December 2, 2004 ruling denied the Attorney General’s request for Boston Edison Company and Commonwealth Electric Company, d/b/a NSTAR Electric (“NSTAR Electric” or the “Companies”) to supplement their response to Record Request AG-3. For the reasons set forth herein, the supplemental request has already been answered and therefore Department should dismiss the Attorney General’s Appeal as moot.

I. BACKGROUND

During the November 18, 2004 evidentiary hearing in this proceeding, the Attorney General asked the Companies’ witness Mr. Hevert to “compare the prices in [Exhibit AG-1] in Table 3 on the top of page 14 with those prices in the Henwood fall 2004 forecast” (Tr. 1, at 112). The Hearing Officer designated the request as Record Request AG-3 (*id.*). Subsequently, the following exchange occurred between the Attorney General and Mr. Hevert:

- Q. [ATTORNEY GENERAL] If the proposed prices in Table 3 on Page 14 of Exhibit AG-1 were to go into effect, would that have any impact on the value of the NEA contracts?
- A. [HEVERT] I don't know. First off, I need to go through the analysis that you requested in the record request, to look at the comparative prices of locational capacity both as contained in Exhibit No. AG-1 as well as in the Henwood forecast. But in addition, I don't know that I could actually replicate the methodology by which Henwood incorporates their capacity prices and in fact the proposed LICAP prices. To paraphrase, even Henwood notes that the value stream associated with the capacity market is uncertain. That being the case, I don't know how I would actually incorporate them in. I suppose we could make some assumptions and go from there.
- Q. [ATTORNEY GENERAL] If you assume that Henwood had attached no monetary value to LICAP prices, what would your response be to that same question that I just asked you?
- A. [HEVERT] Well, it's still "I don't know", because the issue is, Henwood in the past has incorporated the value of capacity, as I had discussed earlier, by their methodology with respect to bidding behavior. I don't know the extent to which they're incremental or not. So, unfortunately, I can't give you a definitive – an answer on that. It may well be that, once I do sit down and read through the whole document, that will be made clear to me.

(id. at 112-113).

The Attorney General then asked to amend Record Request AG-3 to include the type of analysis mentioned by Mr. Hevert, and then restated the request by asking Mr. Hevert "to evaluate what impact the LICAP clearing prices in Table 3 on Page 14 of Exhibit [AG-] 1 would have on the value of the existing NEA contracts if they were to go into effect" (id. at 113-114). After a request for clarification by the Companies' counsel, the Attorney General responded that "Mr. Hevert can respond in whatever manner he sees adequate to address this, as long as he's clear in what he's doing." (id.).

After further discussion, the Hearing Officer asked Mr. Hevert to restate the Attorney General's record request. The following exchange occurred between Mr. Hevert and the Attorney General:

[HEVERT] What we will do is to take the Henwood forecast numbers for the SEMA Rhode Island region. We will extract from that our calculation of what Henwood has included for LICAP. We then will add back to that Mr. Daly's LICAP calculations, knowing that we will need to make some assumptions to go beyond his current forecast period. We will convert those numbers -- we'll be sure that they're all converted to a dollar-per-kilowatthour basis. And we then will include that in RBH-6, as included right now in AG-1-38.

[ATTORNEY GENERAL] Thank you.

(id. at 117-118).¹

On November 24, 2004, the Companies responded to Record Request AG-3 and noted that, although CEA did not know of the specific algorithm by which the Henwood Forecast quantified the value of capacity, CEA assumed that, when converted to a dollar per kilowatt-hour ("kWh") basis, the Capacity Revenue Values contained in Table 5-4 of the Henwood Fall 2004 Electricity and Fuel Price Outlook (Exh. AG-1-36(a)(Supp) **CONFIDENTIAL BULK**) generally reflect the projected capacity values (see RR-AG-3). CEA then completed the requested analysis by performing the following calculations, as set forth in Attachments RR-AG-3(a) **CONFIDENTIAL** and (b) **CONFIDENTIAL**:

1. CEA converted the Capacity Revenue Values to a \$/kWh basis by assuming a system-wide capacity factor of 62 percent (see Attachment RR-AG-3(a), Col. [C]).
2. Since the ISO-NE LICAP values from Exhibit AG-1 cover only the period from 2006 through 2010, and the analysis in Exhibit NSTAR RBH-6 runs

¹ It was further clarified by Mr. Hevert that the Company would be providing the difference between the results of his Record Request AG-3 calculation and Exhibit RBH-6, as reflected in Exhibit AG-1-38 (Tr. 1, at 118).

through 2016, it was necessary to forecast the capacity values from 2011 through 2016. Since the period from 2006 through 2010 includes an anomalous period with high capacity values in 2009/2010 and a relatively low price period for capacity in 2006, it was decided to average these years in order to arrive at a value for capacity for the last six years. CEA then converted the ISO-NE LICAP values contained in Exh. AG-1 to a \$/kWh basis by assuming the NEA facility's approximate average capacity factor of 95 percent.

3. The difference (see Attachment RR-AG-3(a), Col. [G]) between the Henwood capacity values (on a \$/kWh basis) and the ISO-NE capacity values (also on a \$/kWh basis) was then added to the Henwood SEMARI market price forecast as shown in worksheet, *SEMARI CALC*.
4. This new SEMARI all-in price was inserted in Attachment RR-AG-3(b), worksheet, *Escalators*, beginning with cell G49.

(RR-AG-3, at 1-2.)

On November 29, 2004, the Attorney General issued a "Supplement to RR-AG-3" in which he asked whether the CEA or the Companies had contacted the publisher of the Henwood Forecast about how the ICAP values in the Henwood Forecast were calculated, and if not, to contact the publisher and supply the information. The Supplement to RR-AG-3 also asked: (a) to "explain why the Clearing Price by Zone values from Exh. AG-1 were assumed to be nominal dollars;" (b) "why it is appropriate to reflect a 95% availability factor for NEA in converting the per kW values in Exh. AG-1 to per kWh values;" and (c) why it is appropriate to reflect a 62% availability factor for the system in converting the per kW capacity revenue values to per kWh values" (Supplement to RR-AG-3).

The Appeal requests that the Commission overturn the Hearing Officer's ruling that the Companies need not respond to the Supplement to RR-AG-3.

II. THE DEPARTMENT SHOULD DISMISS THE ATTORNEY GENERAL'S APPEAL BECAUSE IT IS MOOT AND FAILS TO ESTABLISH THAT THE HEARING OFFICER ABUSED HER DISCRETION.

The Department should dismiss the Attorney General's Appeal because the issue is moot and the Appeal fails to establish that the Hearing Officer abused her discretion by denying the Attorney General's request for the Companies to supplement their response to Record Request AG-3. The Attorney General alleges that "[t]he Company's response to RR-AG-3 merely reiterated what Mr. Hevert stated on the record, that he was not aware of how [Global Energy Decisions ("Global")]² quantified the capacity value in its market price forecasts" (Attorney General Appeal at 2). In fact, the Companies responded to Record Request AG-3 in precisely the manner as Mr. Hevert stated on the record, i.e., CEA made certain assumptions regarding the Capacity Revenue Values (the "Henwood Capacity Values") contained in Table 5-4 of the Henwood Forecast and the value of capacity post-2010 based on Exhibit AG-1 (the "ISO-NE Capacity Values") and then: (1) converted the Henwood Capacity Values and the ISO-NE Capacity Values to dollars per kWh; (2) added the difference between the Henwood Capacity Values and the ISO-NE Capacity Values to the Henwood Southeastern Massachusetts/Rhode Island ("SEMA-RI") fuel and energy price forecasts; and (3) incorporated the SEMA-RI "all-in" price into Attachment RR-AG-3(b) to determine the effect on the above-market costs of the NEA Restructuring, as reflected in the latest version of Exh. NSTAR-RBH-6 (see RR-AG-3).

² Global publishes the forecast that, in this proceeding, has been called the "Henwood Forecast" (Exh. AG-1-36(a)(Supp) **CONFIDENTIAL BULK**).

Although the Attorney General states in his Appeal that “[t]he purpose of the record request, in part, was to obtain a reasonable explanation of Henwood’s quantification of capacity values...” (Attorney General Appeal at 2), it was clear from the outset that the Companies and CEA did not have the details of the mechanics underlying the Henwood Forecast’s capacity calculations. When asked by the Hearing Officer to “restate his own record request”, Mr. Hevert stated that CEA would extract from the Henwood Forecast “our [i.e., CEA’s] calculation of what Henwood has included for LICAP. We then will add back to that Mr. Daly’s LICAP calculations, knowing that we will need to make some assumptions to go beyond his current forecast period” (see Tr. 1, at 117 (emphasis added)).

The subject matter of the Appeal is moot because the Companies have already answered the questions posed in the Supplement to Record Request AG-3. Of course, CEA has been in contact with the publisher of the forecast regarding the updated Henwood Forecast (see e.g., Exh. AG-1-36). In preparing the Companies’ response to Record Request AG-3, CEA contacted Global about how the value of capacity was incorporated in the updated Henwood Forecast. It is not surprising that CEA was not provided with the specific method by which the Henwood Forecast quantifies capacity values;³ the specific forecast methodology is proprietary and constitutes a significant

³ The computation of the value of ICAP is described in Exhibit AG-1-36(a) (Supp), page 5-19 and 5-20), which indicates that the Henwood Forecast has identified and incorporated values for locational ICAP/UCAP, which are being implemented by the New England and New York ISOs. It describes in qualitative terms how the values are developed, but does not provide the details of the computations.

competitive and strategic asset to the publisher.⁴

Therefore, based on the information provided in the Henwood Forecast, CEA made the reasonable assumption, stated in the response to Record Request AG-3, that the value of capacity in the Henwood Forecast by “co-optimizing energy and capacity market revenues to arrive at a long-term ICAP value” (see Exh. AG-1-36(a) (Supp), page 5-20). This explanation is consistent with CEA’s description of the methodology by which the Henwood Forecast includes the value of capacity. As Mr. Hevert noted during cross examination:

The [forecast] price is not necessarily the marginal cost of the marginal unit, but it is the price at which that owner would cover not only their marginal costs but also the fixed costs of owning capacity.

(Tr. 1, at 108).

Moreover, as noted in the Henwood Forecast, the “simulation process produces an *all-in* price for the energy market. There is no separate calculation for *capacity* beyond limited provisions for various ancillary services. Thus, in modeling the bidding of generators,

⁴ As noted in the Companies’ Reply Brief:

[T]he Companies and the Department have relied on the Henwood Forecast as a stand-alone independent forecast, and have not attempted to “carve out” various individual adjustments to the assumptions and inputs used by the Henwood Forecast in order to analyze the value of the NEA Restructuring, or any other purchase power agreement restructuring or termination. As the Department has noted previously, “the Henwood forecast is a widely-available and reasonable proxy for a forecast of the price of electricity.” Pittsfield at 26. The Companies have relied on the Henwood Forecast because it is an industry-known, independent, third-party forecast of the key energy variables that has been relied on by NSTAR Electric and the Department in the past (Exh. DTE-2-9 [D.T.E. 04-60]). The Henwood Forecasts have historically fallen between other well-regarded market forecasts (Exh. AG-3-10, Attachment AG-3-10(b) **CONFIDENTIAL** [D.T.E. 04-60])

(Companies Reply Brief at 9).

provision must be made for the recovery of all *economic costs* through the price of electricity” (Exh. AG-1-36(a) (Supp), page 3-3 (emphasis in original)).

The Attorney General also alleges in his Appeal that Mr. Hevert did not explain the reasoning for his assumptions regarding whether the ISO-NE Capacity Values were in nominal dollars and regarding the appropriate capacity factors for his analysis (Attorney General Appeal at 3). On the contrary, the response to Record Request AG-3 fully explained Mr. Hevert’s assumptions and method by which he performed his calculation. There was no indication that the values contained in Exhibit AG-1 were denominated in real dollars and in fact, CEA confirmed with the witness sponsoring Exhibit AG-1 before FERC, Mr. Daly, that the Clearing Price by Zone values, as shown in his testimony, are presented in nominal dollars.

As for Mr. Hevert’s capacity factor assumptions, since capacity values are stated in terms of kW-years (or kW-months) for a given amount of generating capacity and the Henwood Forecast market prices are stated in terms of kWh, it is necessary to convert the capacity value amounts to a \$/kWh basis. Accordingly, the capacity values were spread over the relevant number of kWhs in order to calculate the adjusted market price. As it relates to the NEA Restructuring, the relevant measure of production is the product of the plant’s capacity and its capacity factor. As noted in the Companies’ response to Record Request AG-3, “CEA...converted the ISO-NE LICAP values contained in Mr. Daly’s testimony to a \$/kWh basis by assuming the NEA facility’s average capacity factor of 95 percent” (see also Exh. AG-1-12 and Exh. AG-1-13 (Revised)). Since CEA’s analysis used the all-hours SEMA-RI forecast, it is necessary to extract the capacity values based on a system-wide (i.e., incorporates both peak and off-peak resources) average annual

capacity factor because the all-hours price contains capacity from a variety of plants that make up the price forecast. For instance, some plants run at base-load capacity factors, some at intermediate capacity factors and some at peaking capacity factors. Therefore the capacity price has to be a weighted average of all these plants. CEA's analysis was based on the historical average of the ISO-NE monthly load factors of 62 percent (RR-AG-3).

Given the fact that the Companies responded in full to the record request as restated, there is no cause to grant the Attorney General's Appeal. The Attorney General's Supplement to RR-AG-3 has already been answered and the Appeal should be dismissed as moot. The Attorney General's Appeal alleges no abuse of discretion by the Hearing Officer that would justify the Department granting the Appeal. Therefore, the Companies request that the Department dismiss the Appeal.

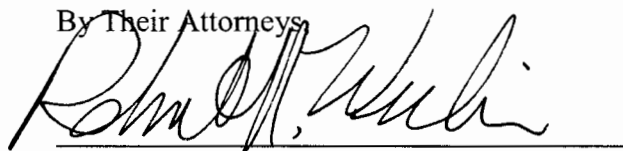
III. CONCLUSION

For the reasons stated above, the Companies respectfully request that the Department dismiss the Appeal, as described herein.

Respectfully submitted,

**BOSTON EDISON COMPANY
COMMONWEALTH ELECTRIC COMPANY**

By Their Attorneys,

A handwritten signature in black ink, appearing to read "Robert N. Werlin", is written over a horizontal line.

Robert N. Werlin, Esq.
John K. Habib, Esq.
Keegan, Werlin & Pabian, LLP
265 Franklin Street
Boston, Massachusetts 02110
(617) 951-1400

Dated: December 14, 2004